

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO DENY THE PETITION FOR RECONSIDERATION

Kai M. On (Respondent) petitions the Board of Administration to reconsider its adoption of the Administrative Law Judge's (ALJ) Proposed Decision dated October 3, 2024. For reasons discussed below, staff argues that the Board should deny the Petition for Reconsideration and uphold its decision.

Respondent was an employee of the California Department of Motor Vehicles (Respondent DMV). By virtue of his employment, Respondent is eligible for CalPERS health benefits under the Public Employees' Medical and Hospital Care Act (PEMCHA), if all eligibility requirements are met.

On February 2, 2013, CalPERS received an employer-originated application from Respondent DMV on Respondent's behalf. On February 13, 2013, CalPERS notified Respondent of the employer-originated application and requested that Respondent complete and return his portion of the disability retirement application. CalPERS also provided Respondent with a copy of Publication 35 "A Guide to Completing Your CalPERS Disability Retirement Election Application" (PUB 35), which included information about CalPERS health coverage eligibility including the warning "if your retirement effective date is more than 120 days after separation from employment, you are not eligible for coverage at retirement or at any future date." Respondent did not reply or provide the requested information. As a result, his application was canceled on July 3, 2013.

Respondent DMV issued a Notice of Medical Termination with an effective date of termination on April 4, 2014. Respondent appealed the medical termination to the State Personnel Board (SPB). On September 25, 2014, SPB upheld the medical termination.

On March 23, 2021, Respondent submitted an application for service retirement with an effective date of June 15, 2021. CalPERS processed the application and Respondent began receiving his service retirement benefits.

On October 4, 2023, Respondent wrote a letter to CalPERS regarding health enrollment asserting that he was waiting for his "real" CalPERS retirement payment and health insurance. On October 13, 2023, CalPERS notified Respondent he was not eligible for health benefits because he retired beyond 120 days from his separation date with Respondent DMV. On November 30, 2023, CalPERS met with Respondent and explained his status and options. After the meeting, CalPERS sent a confirming letter to Respondent which summarized the meeting, explained his benefits, and cited relevant law precluding Respondent from receiving health benefits.

Respondent sent CalPERS a letter on December 7, 2023, explaining he did not know about the health benefits for which he could have been eligible. On April 17, 2024, CalPERS determined that Respondent did not recognize he was forfeiting his health

benefits by not complying with CalPERS' request to complete a disability retirement application. CalPERS offered to correct the mistake by providing Respondent with the opportunity to submit a disability retirement application. Respondent did not apply for disability retirement, instead opting to appeal CalPERS' health benefits determination.

A hearing on Respondent's appeal was held on September 4, 2024. The Proposed decision was adopted by the board on November 20, 2024.

On December 11, 2024, Respondent submitted a Petition for Reconsideration, in which he again argues that CalPERS' staff caused him to lose his CalPERS health benefits and failed to adequately address his concerns. Respondent's arguments are not new. At the hearing, the ALJ found that Respondent was not eligible to enroll in a health benefits plan because he did not meet the definition of either employee or annuitant. The ALJ also found that there was no legal basis to find that Respondent may now change his retirement election from service to disability.

Also in his Petition for Reconsideration, Respondent asserts that CalPERS failed to inform him that he was ineligible for health benefits before he elected to service retire. At the hearing, CalPERS presented evidence that Respondent was provided with publications that informed him that he would not be eligible for health benefits if he retired more than 120 days after his separation from state service. CalPERS also presented testimony that Respondent had at his disposal published materials, customer service representatives, and retirement education opportunities to assist him in the retirement process. The ALJ found there was no evidence showing that Respondent's choice was the result of an error or omission, that his error was caused by a mistake, or that he sought to correct the mistake.

No new evidence has been presented by Respondent that would alter the analysis of the ALJ. The Proposed Decision that was adopted by the Board at the November 20, 2024, meeting was well-reasoned and based on the credible evidence presented at the hearing.

For all the foregoing reasons, staff argues that the Board should deny the Petition for Reconsideration.

January 13, 2025

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